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In the Supreme Court of the United States

No. 608

LUCILLE E. MORAN,
PETITIONER,

v.

HARRY D. PENAN ET AL,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

LUCILLE E. MORAN,
Petitioner, Pro se

Blanchard Press, Inc., Boston, Mass. — Law Printers

INDEX

	Page
Opinion Below	1, 18, 19
Jurisdiction	2
Questions Presented	3
Constitutional Provisions, Statutes, Rules and Regulations Involved	5
Statement	6
Reasons for Granting the Writ	10
Conclusion	17
Appendix A	18
" B	20
" C	21
" D	22
" E	23
" F	24
" G	29
" H	31
" I	32

Cases Cited

Cooper v. *Pate*, 378 U.S. 564 ..... 10, 15-16
Monroe v. *Pape*, 365 U.S. 167 ..... 10, 16

Constitution Cited

United States Constitution,
First Amendment 5, 36
Fourth Amendment 3, 6, 15, 37
Fourteenth Amendment .. 3, 6, 8, 9, 12, 13, 15, 37

Statutes Cited

28 U.S.C. 1343 ..... 2, 5, 6, 37
37 U.S.C. 351-354 ..... 5, 8, 9, 10, 32
42 U.S.C. 1983 ..... 2, 5, 6, 38
42 U.S.C. 1984 ..... 2, 38
42 U.S.C. 1985 ..... 2, 5, 6, 38, 39, 40

Other References Cited

Page

Handbook of Information, Veterans Administration .. 12
Report of Attorney General of Massachusetts, 1956 ... 12
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(power of attorney) Form 6711 ..... 3, 7

Federal Rules of Civil Procedure Cited

Rule 8(a) 4, 34
Rule 9(b) 4, 34
Rule 12(b) 4, 5, 34
Rule 75(h) 10

In the
Supreme Court of the United States

No.

LUCILLE E. MORAN,
PETITIONER,

v.

HARRY D. PENAN ET AL,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause on June 8, 1965.

Opinions Below

The opinion of the United States District Court for the District of Massachusetts dismissing the petitioner's cause, set out at R. 159-160 is unreported. The affirming opinion of the Court of Appeals for the First Circuit, appended hereto as Appendix A, is unreported.

Jurisdiction

The judgment of the Court of Appeals was made and entered on June 8, 1965. A petition for rehearing, filed by the petitioner, was denied by the Court of Appeals on June 28, 1965, Appendix D. Jurisdiction of this Court is invoked under 28 U.S.C. 1254, 28 U.S.C. 2101 and 42 U.S.C. 1984. (App. I)

Questions Presented

Companion suits brought under Civil Rights Acts, 28 U.S.C. 1343; 42 U.S.C. 1983 and 1985, for deprivation of rights secured under the Constitution and laws of the United States were dismissed by the district court on various grounds pleaded by respondents and consolidated by the court of appeal. The district court included Two (2) causes of action against members of the Massachusetts judiciary in its consolidation. (R. 159-160) Before the consolidated case was docketed at the First Circuit Court of Appeals, the petitioner made a timely motion in the district court for permission to join other companion actions against Town and Municipal Police and State officials, in the same consolidation. (Appendix H). The district court denied.

The court of appeals affirmed the lower court's dismissal of the consolidated cause. The questions presented are:

I. Whether the petitioner stated a cause of action for deprivation of rights secured to her under the Constitution and laws of the United States in separately filed companion actions under provisions of 28 U.S.C. 1343 and 42 U.S.C. 1983 and 1985.

a. Where the court consolidated some, including actions against members of the State judiciary, but refused to consolidate others brought against Town

and Municipal Police and State officials. (Appendix E)

b. Where the petitioner, by law an officer of the United States, as an officer-member of the uniformed services (Appendix H) pleaded that respondents conspired to deprive her of her military status, and usurp the Federal jurisdiction to deprive her of her right to receive Army Retired Pay, under color of the laws and authority of the State of Massachusetts.

c. Where the petitioner pleaded that under color of State law and authority, she was deprived by officers of a respondent bank of her right to receive United States Army Retired Pay, in violation of provisions set forth on United States Treasury Department Form 6711, power of attorney. (R. 56, 57, 58)

II. Whether the doctrine of judicial immunity is so all embracing, it insulates members of a State judiciary against liability in suits brought under the Civil Rights Act:

a. Where the petitioner pleaded that she was deprived her right to due process under the Fourteenth Amendment by a State judge who issued a warrant for her arrest without charges as a hoax. (R. 155)

Further, where the object of causing the petitioner to be arrested by warrant was not to bring the petitioner before the issuing Court, as provided by statute, constituted a clear violation of her rights under the Fourth Amendment. (R. 155)

b. Where the petitioner pleaded that a second State judge from another judicial district physically usurped the Federal jurisdiction for the object of

staging a private hearing, purporting to commit the petitioner to a United States Veterans Administration institution, under color of the laws and processes of the State of Massachusetts, where she had been held prisoner for Thirty-three (33) days. (R. 106, 107)

III. Whether a cause brought under the Civil Rights Acts can be barred on a defense that the petitioner's separately filed pleadings failed to meet standards set forth in Rule 8(a) Federal Rules of Civil Procedure, of a short and plain statement. (Appendix I)

a. Where the petitioner's pleadings of an intricate scheme executed and conducted under color of State law, to deprive her of her rights and immunities through a series of extrinsic frauds, were set forth with particularity in accordance with provisions of Rule 9(b) F.R.C.P. (Appendix I)
b. Where a defense that the petitioner had not met standards required by F.R.C. P 8 (a), was raised in motions to dismiss under Rule 12 (b) of the Federal Rules of Civil Procedure. (Appendix I) (R. 137, 138, 139, 140, 144).

IV. Whether a cause brought under the Federal Civil Rights Acts may be barred by substituting Two (2) year statutes of limitations for State Tort suits:

a. Where there are no standing State laws providing against conspiracy to deprive Federally secured rights. (R. 162)
b. Where the petitioner pleaded that an object of conspiracy was to forcibly banish her from courts

as a legitimate party or litigant, by classifying her a persona non grata, under color of State law.

c. Where respondents raising such defense helped to enforce banishment of the petitioner from the courts, on the grounds she was a persona non grata, for over Three (3) years.

d. Where the petitioner filed all actions jointly and severally in the United States District Court of Massachusetts within Two (2) years of the last date of enforcement of the objects of conspiracy.

e. Where the defense of limitations was raised in motions to dismiss under Rule 12(b), (Appendix I), of the Federal Rules of Civil Procedure. (R. 136, 137, 139, 140, 141-142, 143, 144, 145 & 146)

V. Whether scruples of a religous nature are valid grounds in making determinations of mental illness for purposes of confining individuals involuntarily within the Federal jurisdiction. (R. 152, 68)

a. Where the petitioner contends she was punished and her First Amendment rights abridged because of her personal religious beliefs.

Constitutional Provisions, Statutes, Rules and Regulations Involved

Pertinent portions of the First, Fourth and Fourteenth Amendments to the United States Constitution; Civil Rights Act 28 U.S.C. 1343, 42 U.S.C. sections 1983, 1984 and 1985; 37 U.S.C. 351-354; Federal Rules of Civil Procedure 8(a), 9(b) and 12(b); and Army Regulations published in DA Pamphlet 600-5 are set forth in Appendix I.

Statement

Civil suits entered in the United States District Court, as companion actions, under provisions of 28 U.S.C. 1343 and 42 U.S.C. 1983 and 1985, arise from three extrinsic frauds conspired and carried out under color of the laws, authority and processes of the State of Massachusetts. The District Court had original jurisdiction pursuant to the provisions of 28 U.S.C. 1343. (Appendix I)

The petitioner, by law an officer of the United States government, complains of a series of convergent acts, aimed primarily at depriving her of her official status and usurping her right to receive United States Army Retired Pay, under color of the laws of the State of Massachusetts, as a means for defrauding her, secondarily, of her private Financial estate. (Appendix I)

1. The first extrinsic fraud was performed by a respondent justice of the Springfield (Mass.) District Court, who conspired with the petitioner's brother to issue a Show-cause warrant to seize the petitioner without charges (R. 155), under color of the provisions of s. 55, Ch. 123, MGL, as a hoax; in order to cause her to be arrested by surprize and brought into Police custody.

The issuing judge sanctioned a pre-conceived plan for depriving the petitioner of the due process of a Hearing in his court, by authorizing the petitioner's brother to arrange such measures for disposition of the petitioner as he deemed convenient, as soon as, she had been taken in Police custody; in violation of rights and immunities secured to the petitioner under the Fourth and Fourteenth Amendments to the United States Constitution. (R. 148-149)

The petitioner's brother elected to pay an obscure private physician he knew, to try to interrogate the petitioner at the Police station, and then execute a Ten (10) Days

statutory order, under color of s. 79, Ch. 123 MGL, directing she be delivered out of police custody forthwith, by other agents paid by her brother, (R. 156) to summary imprisonment at a United States Veterans Administration hospital, ninety miles distant. (R. 151-152)

2. The second extrinsic fraud was commenced Nine (9) days after the first, in the Hampden County Probate Court, also in Springfield, Massachusetts, by the General Counsel of a Bank, to which the petitioner had granted a Treasury Department power of attorney to collect her Retired Pay checks for deposit to her account, in accordance to regulations of the Departments of the Treasury (R. 56, 57, 58) and the Army (Appendix I). This action was undertaken in conspiracy with the petitioner's aforesaid brother and other hostile relatives to further deprive the petitioner of rights and privileges attending her military status and to usurp her Federal right to receive Army Retired Pay, as an officer of the United States, (Appendix I), under color of State law. A petition was entered in the aforesaid Probate Court by the Bank official, praying that the grantee Bank be appointed conservator of the petitioner's financial estate, under color of State law while she was being held prisoner by employees of the United States Veterans Administration and forcibly prevented from attending or answering as the named party proceeded against. (R. 59, 60, 61, 62, 63). For reasons of deception, the fiduciary capacity prayed for, was referred to as "guardian", and the petitioner's status represented to be that of a civilian-veteran. (R. 174)

The Probate Court fraud was done in violation of specific provisions set forth on the Treasury Department power of attorney, as follows; "This power of attorney is not given to carry into effect an assignment to the attorney, or to any other person, of the right of the undersigned to receive the above-described payments." (R. 56-57); viola-

tive of provisions of 37 U.S.C. 351-354 (Appendix I); without notice of the transaction to the United States Army Paying Office for Fourteen (14) months thereafter, (Appendix I); all in deprivation of rights and immunities secured to the petitioner under the Fourteenth Amendment.

3. The third extrinsic fraud was undertaken and carried out by employees of the United States Veterans Administration, conspiring first to take unlawful custody of the petitioner and certain of her valuable properties, under color of state law, while Probate proceedings against her were commenced and carried into effect, (R. 60, 61); and secondarily conspiring a means, also under color of State law to furnish timely implementation, seeming to bear a stamp of approval by the Federal government, to give substantiation to the aforesaid Probate court activities. (R. 62, 63)

Proceeding on the error in fact that the petitioner was a discharged veteran having private civilian status, and not a retired member of the uniformed services, as was the case; and the error in law, that evidence of judicial commitment constituted prima facie evidence of incompetence under the laws of the State of Massachusetts, respondent employees of the United States Veterans Administration contrived to simulate judicial committal proceedings, under color of the laws, authority and processes of the State of Massachusetts, on the premises of the United States Veterans Administration, while the petitioner was being held hostage within such Federal jurisdiction. (R. 63-69)

To this end, a second respondent member of the Massachusetts judiciary, from another judicial district of the aforesaid State, conspired to usurp the Federal jurisdiction for the object of holding a sham committal hearing (R. 106-107), with an object of extrinsically defrauding the petitioner, under color of State law, of her military status;

rights and privileges attending her status as an officer of the United States; her right to receive Army Retired Pay income; rights and immunities secured to her under the Fourteenth Amendment to the Constitution; her private financial estate; and her political estate as a free and independent sovereign.

A respondent V.A. physician, who did not meet standards of competence required by 37 U.S.C. 352, (Appendix I), executed a cerificate, forthwith, asserting that the petitioner had been "committed" to the United States Veterans Administration station, (R. 178); which paper was promptly forwarded to the respondent Bank Officer (R. 62-63 & 70-71) to facilitate appointment of the respondent Bank, at ex parte proceedings, as fiduciary over the petitioner's entire financial estate, including her Retired Pay income, under color of the laws of Massachusetts. (R. 71-72). Inasmuch as the petitioner was restrained of her liberty by V.A. employees until shortly after the Probate court decree was allowed, her behalf was unrepresented, and decree was allowed without contest from the respondent party proceeded against, (R. 72), who is the petitioner in this cause.

Valuable papers and negotiable instruments belonging to the petitioner (R. 87-88), which Veterans Administration employees had seized when they took her prisoner, were never returned to the petitioner, but were transferred to the respondent Bank. (R. 82, 83)

Because Federal restrictions and protections provided by 37 U.S.C. 352 (Appendix I), were defeated and evaded by depriving the petitioner of rights and privileges attending her status as a retired officer of the uniformed services of the United States government; prime conspirators in this case were able to pay themselves and other participants directly from the petitioner's financial estate, for either performing intermediate steps toward the reaching

of the above-described goals of conspiracy, or, for diversely furthering and enforcing its objects for over Three (3) years thereafter.

By usurping the jurisdiction of the Federal government and the military establishment, and conducting a series of events and transactions under color of the laws and authority of the state of Massachusetts; the petitioner was subjected to oppressive indignities and controls by a series of conspirators, many of whom asked and received pecuniary rewards distributed from the petitioner's estate, which could not have been exacted had re-assignment of her right to receive Retired Pay been lawfully secured under provisions of 37 U.S.C. 352 (Appendix I).

On December 30, 1964, the United States District Court entered an order dismissing and consolidating several of the petitioner's separately filed companion actions on various grounds. (R. 159-160)

The petitioner filed a timely motion in the District Court pursuant to Rule 75 (h) Federal Rules of Civil Procedure, to settle the record by correcting the transcript. The District Court denied (Appendix E, F, G). Pursuant to Rule 75 (h) FRCP, the petitioner then filed a motion in the First Circuit Court of Appeals to settle the record on the same grounds. The Court of Appeals denied the petitioner's motion (Appendix B) and affirmed the lower court's dismissal of her consolidated causes.

Reasons for Granting the Writ

The decision below should be reviewed for the reasons that it is in conflict with decisions of this Court in *Monroe* v. *Pape,* 265 U.S. 167 and *Cooper* v. *Pate,* 378 U.S. 546; and because the issues here, left unresolved in the court below, are of an imperative nature and of far-reaching consequence to the large number of persons in the

Northeastern states who have honorably served tours of duty with the Armed Forces of the United States in times of national emergency.

In its opinion (Appendix A), the Court of Appeals revealed it was either mistaken or misled as to the actual issues raised, by citing as ground for ruling against the petitioner, cases that bear no relevance or analogy to the instant cause. The First Circuit Court of Appeals affirmed the lower court's dismissal of the petitioner's cause, on what it improperly construed as being the nature of her complaints.

1. In deciding that the petitioner had not shown in her pleadings conduct sufficient to support a cause of action under the Civil Rights Acts, the court below over-looked several important Federal issues.

One of the more serious being a matter of usurpation of the Federal jurisdiction by a respondent member of the Massachusetts judiciary, which the petitioner set forth in her amended complaint (R. 116 & 97) and affidavit (R. 121).

Although, the petitioner, an officer member of the uniformed services of the United States government was inadvertently proceeded against after she was unlawfully imprisoned at a United States Veterans Administration station, on the error in fact, that she had the status of a private civilian-veteran; usurpation of the Federal jurisdiction by members of the Massachusetts judiciary is practiced as policy against discharged veterans, who are, in fact, private civilians.

Such practice relies for its authority on the opinion of a Massachusetts Attorney General, countermanding statutory provisions regulating commitment procedures by Massachusetts courts to non-military Federal institutions set forth in section 20-A, Chapter 123, of the General Laws of Massachusetts (R. 22), and authorizing usurpation of the Federal jurisdiction in lieu thereof, as a matter of State policy:

". . . it is my opinion that our State courts have full jurisdiction in the matter of the commitment of mentally ill veterans in Federal hospitals, and that you are acting properly in arranging "private hearings" on such reservations. Such proceedings and procedure are authorized by State legislation, and they do not violate any Federal rights."

See REPORT OF THE ATTORNEY GENERAL OF MASSACHUSETTS 1956, pp. 78-83, at page 83.

The petitioner pleaded the issue in the courts below, of a respondent member of the Massachusetts judiciary presenting himself on the premises of the United States Veterans Administration station at Bedford, Massachusetts in the spurious capacity of an "Acting special justice" in order to conduct a sham committal hearing, under color of state law, as violative of her rights under the Fourteenth Amendment due process guarantee. (R. 106-107)

The fact that the incident was not an isolated act, peculiar to the petitioner's case, but a continuing wrong practiced as routine against former military personnel whether they are citizens of Massachusetts or citizens of any other state, makes this case one of great and urgent public concern.

A recent publication distributed by the V.A. station at Bedford Massachusetts, affirms this policy, in the following language:

"The Veterans Administration Hospital at Bedford, Massachusetts was established in 1928 for the care and treatment of veteran patients. Since 1947 facilities have been available for treatment of women as well as men. Patients are accepted from Eastern Massachusetts, Maine, New Hampshire and Vermont.

"Some form of temporary care document, voluntary application or judicial commitment is required at the time of admission of patients to the hospital. Veterans

residing in the states of Maine, Vermont, Massachusetts and New Hampshire are committed under Massachusetts laws."

See HANDBOOK OF INFORMATION, Veterans Administration, 200 Springs Road, Bedford, Massachusetts, at page 1.

From the foregoing, it is plain that Federal employees of the Northeast Regional V.A. stations located in the state of Massachusetts, acting in concert with State officials, routinely deprive citizens of several states of Federal rights and immunities secured to them under the Fourteenth Amendment due process guarantee, because they are veterans.

It is worthy of notice, that members of the community-at-large are liable to the foregoing deprivation of Federal rights, as a States Rights practice conducted under color of law; only where it can be shown that an individual has served a hitch of active duty with the Armed Forces of the United States and received an honorable discharge.

In the V.A. Northeast Region, which encompasses the states of Maine, New Hampshire, Vermont, Rhode Island, Massachusetts and parts of New York State, the United States government maintains and operates Three (3) Neuro-psychiatric stations, all of which, by some coincidence, are to be found within the geographical boundaries of Massachusetts.

By jointly pursuing as policy, an opinion from an official of the executive branch of Massachusetts state government, (supra), Federal employees and Massachusetts juridical officers have, for many years, abridged the rights and immunities of numerous civilian-veterans from New York State and Vermont at the United States Veterans Administration Hospital at Leeds; from Rhode Island at the United States Veterans Administration Hospital at Brockton; from Maine, New Hampshire and Vermont, including women, at

the United States Veterans Admistration Hospital at Bedford; and from Massachusetts, at all three.

Since the United States Congress has enacted no laws, providing for conduction of commitment proceedings by Federal judges on V.A. reservations; Massachusetts officials have proffered themselves to fill a need never intended by the United States government, by imposing compulsory confinement processes, under color of state law, on terrain in excess of their powers and authority, where admittance was intended to be made upon the voluntary application of eligible candidates. (Appendix I)

These unlawful forays by Massachusetts officials have made no man's lands of United States Veterans Administration reservations within their state and effectively put discharged veterans outside the protections of the laws and courts of the Federal government and the laws and courts of the several states.

Significantly, Massachusetts judges and other state officials construe the out-raged dignity and complaints of civilian-veterans and others they find at these V. A. stations, concerning unjust and wrongful acts against them, as being evidence of the very reason they are where they are, and why they should be compelled to remain. (R. 67, 68, 69)

2. The serious Federal issue of how law-respecting individuals may arrive as prisoners in the Federal jurisdiction, to be thereafter proceeded against for any frivolous or handy reason while they are confined, may be done with as sophistocal an eye for due process of law, as happened in the petitioner's case, except where the situation is further compounded by transporting a hostage over state-lines, as well as, the Federal boundaries.

In minimizing the import of issues raised by the petitioner, the court below over-looked complaints made against another respondent member of the Massachusetts judiciary.

This officer freely admits doing what the petitioner says

he did; asserts such conduct to be within the scope of his powers and authorities; and defends his right to issue a warrant as a hoax, on the grounds of judicial immunity. (R. 147-149, 155).

The petitioner claims such respondent issued a Show-cause warrant without charges, to cause her to be arrested by surprize (R. 155) when he intended to deprive the petitioner of the due process of a hearing before him or any other justice of his court. That the respondent judge misused his powers and abused the warrant process, by issuing an order for the seizure of the petitioner for a purpose other than to bring her before the issuing court for hearing. (R. 155)

That the object of issuing the warrant, was in fact, merely the way of compelling the petitioner to be brought into the Police station, in order that such environs could be used as a staging area for a respondent private physician, who came there by pre-arrangement to execute a statutory temporary care order, under color of state law, to assure her summary imprisonment in the Federal jurisdiction, where she could thereafter be proceeded against by an itinerent member of of the Massachusetts judiciary from another judicial district. (R. 151-152) and (R. 106, 107, 108)

The petitioner contends that judicial immunity confers no general license for the misuse of judicial processes and authority; no insulation against Civil Rights suits when oppressive abuse of public power is aimed at abridging rights of citizens to due process of law under the Fourteenth Amendment, whether acts be violative of rights and immunities secured under the Fourth Amendment or preposterous invasions of superior jurisdictions for unlawful purposes.

3. The petitioner relies on principles laid down by the Court in *Cooper* v. *Pate*, 378 U.S. 564;

> "Taking as true the allegations of the complaint, as they must be on a motion to dismiss, the complaint stated a cause of action and it was error to dismiss it."

and in *Monroe* v. *Pape,* 365 U.S. 167, especially the Court's language at page 170;

> "Allegations of facts constituting a deprivation under color of state authority of the guaranty against unreasonable searches and seizures, contained in the Fourth Amendment and made applicable to the States by the Due Process Clause of the Fourteenth Amendment, satisfies to that extent the requirement of s. 1979."

4. The petitioner has brought this cause before the Court in her own idiom, because the erratic formula exercised conjunctively by employees of the Northeast V.A. Region and Massachusetts officials has made former military personnel easy prey for hostile relatives who want to punish or get rid of them, or other artful and designing persons who merely want an individual stamped with the stigma of insanity as a trick; and who can arrange through a friendly judge and other state officials, or, by undisguised abduction methods, to deposit the victim at one of the Three (3) aforementioned V.A. reservations located in Massachusetts. Employees of the United States V.A. takes over from there (R. 63, 64, 65, 66, 67).

Abuses of the veteran-status to deprive him of Constitutional rights to due process, does not cease at matters relating to his personal liberty and freedom. His confinement may be arranged as a ruse, merely to afford time sufficient to prevent him from answering, attending or testifying as a party, as in the instant case, in proceedings concerning

his property and right to property (R. 32, 33, 38-39); and to have him blemished with the stigma of insanity to facilitate designs for defrauding him of his property and other basic rights, under color of State law (R. 70, 71, 72) and then released, bereft of the most elementary citizen powers.

The questions presented in this case are of momentous and recurring significance in the administration of equal justice under the laws; and raise the threshold issues of whether unsuspecting citizens of several Northeastern states may be proceeded against and oppressed on Federal reservations under a States Rights policy devised by Massachusetts officials, who conceive a hitch of active military duty as constituting a denominator for transforming individuals into members of an inferior class; whether honorable duty with the uniformed branches merits the historical respect for the patriotic impulse, or constitutes a liability to defective immunity inviting exploitation, therefore; whether former military personnel, as any other persons, are entitled to expect enforcement of individual civil rights and insulations, as being the fundamental business of State and Federal officials; rather than to discover that entrapment and the other traditional processes of tyranny have become the chief industry of officials who by perceiving others in stereotype, prejudice them as members of fixed and rigid classes; makes this case a singularly appropriate one for exercise of this Court's discretionary jurisdiction.

Conclusion

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Lucille E. Moran,
Petitioner, Pro se

Appendix A

[NOTE: Because of its lack of value for citation purposes this opinion will not be published.]

United States Court of Appeals

For the First Circuit

No. 6487.

LUCILLE E. MORAN,

PLAINTIFF, APPELLANT,

v.

HARRY D. PENAN ET AL.,

DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge*, BREITENSTEIN,* *Circuit Judge*, and GIGNOUX, *District Judge*.

Lucille E. Moran, pro se.

Samuel W. Gaffer, Assistant Attorney General, with whom *Edward W. Brooke*, Attorney General, was on brief, for Harry D. Penan and Thomas J. O'Malley, appellees.

J. Bushnell Richardson, Jr., with whom *John Dunn*, *Robert G. Conley*, *Efrem A. Gordon* and *Matthew J. Ryan, Jr.*, were on brief, for Valley Bank and Trust Company, Salvatore Sannella, Harold J. Crumb, C. Rogers Lord, Efrem A. Gordon and James S. Bulkley, appellees.

Mitchell G. Hadge, with whom *Lawrence F. O'Donnell*, *Alfred E. Nugent* and *Claude B. Cross* were on brief, for Margaret-Joyce Diamond, Mildred E. Bixby, Samuel L. Thompson, and Norris B. Flanagan, appellees.

Melvin B. Miller, Assistant U. S. Attorney, with whom *W. Arthur Garrity, Jr.*, United States Attorney, was on brief, for Leon J. Duff, Clementine McKeon, Arnold Gofstein and Ralph J. Luise, appellees.

*By designation.

OPINION OF THE COURT.

June 8, 1965.

PER CURIAM. Appellant complains of the granting of various motions to dismiss or for summary judgments against her on the grounds that in none of her suits charging conspiracy to deprive her of rights under the Constitution and laws of the United States has she shown conduct sufficient to support causes of action. Our examination of the record discloses no error. 42 U.S.C. §§1983, 1985(3); *Joyce* v. *Ferrazzi,* 1 Cir., 1963, 323 F.2d 931; *Francis* v. *Lyman,* 1 Cir., 1954, 216 F.2d 583; *Francis* v. *Crafts,* 1 Cir., 1953, 203 F.2d 809, *cert. den.* 346 U.S. 835. See also, *Mezullo* v. *Maletz,* 1954, 331 Mass. 233; *cf. Viegoda* v. *Barton,* 1965 Mass. A.S. 223. We do not reach the further questions of whether appellant's actions were barred by the statute of limitations, and that her pleadings failed to meet the requirements of F.R.Civ.P. 8(a).

Judgment will be entered affirming the judgments of the District Court.

Appendix B

ORDER OF COURT.
June 8, 1965.

It is ordered that appellant's motion to settle record by correcting transcript be, and the same hereby is, denied.

By the Court:
ROGER A. STINCHFIELD, *Clerk*
By: (s) DANA H. GALLUP
Chief Deputy Clerk.

Appendix C

JUDGMENT
June 8, 1965.

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgments of the District Court are affirmed.

By the Court:
ROGER A. STINCHFIELD,
Clerk.
By: (s) DANA H. GALLUP
Chief Deputy Clerk.

Appendix D

ORDER OF COURT

June 28, 1965.

It is ordered that the petition for rehearing filed June 21, 1965, be, and the same hereby is, denied.

By the Court:

(s) ROGER A. STINCHFIELD,
Clerk.

Appendix E

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
LUCILLE E. MORAN,
Plaintiff, Appellant,
v.
HARRY D. PENAN ET AL,
Defendant, Appellees.

APPELLANT'S MOTION TO SETTLE RECORD BY CORRECTING TRANSCRIPT

Now comes the Appellant in the above-entitled motion and moves that in accordance to Rule 75(h) of the Rules of Civil Procedure, that the Court order the record on appeal to be settled to conform to the truth by correcting the transcript, or order the court below (Wyzanski, J.) to settle the record.

Errors to be corrected are set forth in the appended copy of a motion entered in the court below. At a hearing on March 17, 1965, the court below dismissed the plaintiff-appellant's motion on the grounds, "There is no such motion known to me" and further directed that the court settle the record. Transcript of hearing is appended.

The Plaintiff-appellant has been unable to make this motion to the court, previously, because she has experienced difficulties in obtaining a transcript of the proceedings in the court below on March 17, 1965. The proper transcript was not received until this 21st day of April 1965.

THE PLAINTIFF, APPELLANT
LUCILLE M. MORAN, *Pro se*
Post Office Box 82,
Westfield, Massachusetts

Post Office Box 381,
Key West, Florida

Appendix F

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS
LUCILLE E. MORAN,
Plaintiff,
v.
HARRY D. PENAN, ET AL,
Defendants.
Consolidated Case No. CA 64-751-W

MOTION TO SETTLE RECORD BY CORRECTING TRANSCRIPT

The Plaintiff moves the court for an order settling the record on appeal to conform to the truth and that the clerk be directed to certify the record as thus settled.

The grounds of this motion are as follows:

1. Portions of the transcript of the motion hearing designated by plaintiff for inclusion in the record are inaccurate and do not disclose the truth of what occurred on December 24, 1964 at motion hearing of this case in the following respects:

a. Paragraph 2 on page 7 should read:

"No such instrument issued to the Hampden County District Court, where this thing emanated from in the first place. I was held beyond this Ten day paper unlawfully, wit out due process of law, without the normal sequence of due process of law, until the 10th of December, when a judicial commitment occurred, under color of this Section 20-A, when I had been up there for 33 days. This was enacted through the Middlesex District Court, your Honor."

b. Paragraph 3 on page 7 should read:
"I am a person, who was at the time carried on the Retired lists of the United States Army by the Adjutant General's Office, under the designation of the Secretary of the Army. This is a designation that distinguishes an Army retired person, from a person subject to all the "benefits and priveleges," so-called, of the Veterans Administration."

c. Paragraph 4 on page 7 should read:
"Now, I was carried on this list; on it I was entitled to draw United States Army Retired Pay. These are the two divisions to separate people from Veterans Administration control, from other people who have had military service. Because of that, Section 84 of Chapter 123 applied to me."

d. Paragraph 1 on page 8 should read:
"I was deprived of the protection of the military jurisdiction, and because of the provisions of 20-A, which prohibits any emergency orders, or "Ten-day" orders, or "immediate care" orders, your Honor, to facilities operated by the United States Government; that of itself excludes any outside doctors from coming in, under color of a state court, or under color of the auspices of the United States Veterans Administration."

e. Paragraph 2 on page 8 should read:
"It also prohibits a person from coming, as Judge Penan did, on to the jurisdiction of the United States Government and setting up in a room there, right at the Veterans Administration . . . . setting up a quasi-court arrangement and going through these motions."

f. Paragraph 3 on page 8 should read:
"Now, as far as the statutes of limitations are concerned, if they do apply, the court has original

jurisdiction in 1983 and 1985 of Title 42 and of 28 U.S.C. 1343. If the statutes of limitations do apply to something in the Federal jurisdiction originally, then this will explain itself." (Plaintiff handing exhibit to Court Messenger)

g. Paragraph 4 starting at bottom of page 8 and continuing over to page 9, should read:

"The reason I was brought to the Veterans Administration was first, the object was, to hold me in this manner and prevent me from having my day in court; keep me out of the courts of the Commonwealth, where these defendants have a little influence—I dont—my brothers have a little influence, too. They are both members of the bar. They were executors of my Father's estate. This wrangle started as a family fight. I was the principal heir. People in this court cut themselves in on my estate . . . what my Father left me. I was kept out of the courts, under color of a "guardianship".

h. Paragraph 3 on page 9 should read:

"If you are going to get a guardianship for a person (1) it isn't a corporation, (2) the person is served and they are brought into court."

i. Paragraph 5 on page 9 should read:

"My money was in the Valley Bank and Trust Company. I had also given them power of attorney, which I have referred to in these suits, to collect and deposit my retired pay. For 13 years prior to that I had my checks deposited in a bank in Arizona."

j. Paragraph 1 on page 10 should read:

"Somehow my brother was friendly with the people who run the bank and knew the business I was doing. I had a substantial deposit in my check-

ing account. I had also given them the Treasury Department power of attorney, for the collection, only, of my retired pay. It was not a latch key, to drop the noose around me."

k. Paragraph 3 on page 1 should read:

"I had the car two months, when this happened to me. I was summarily arrested. My car was taken by a police officer of Longmeadow . . . . It was received by the Valley Bank and Trust Company, who were not concerned in my Father's estate, whatever."

l. Paragraph 4 on page 10 should read:

"If anybody here wants to think I am "paranoid", that is fine: I was trusting enough to allow these people to hold the coupon book for that installment loan, so they could pay themselves out the income of $157.75, that was coming in to them automatically for 12-months, on that power of attorney.

m. Paragraph 5 commencing at the bottom of page 10 and continuing over to page 11, should read:

"Now as to the transfer, the Federal employees transfer of my property. I had assets in the amounts of about $13,000 on my person, when I was brought in to that Veterans Administration Hospital. These were taken from me. They acted as a transfer agent to that bank which had requested paper, so they could run off this thing under color of law, under a so-called Financial guardianship."

n. The last line of paragraph 3 on part 11 should read:

"That is why I am so persistent, your Honor."

o. Paragraph 7 on page 14 should read:

"If you sent a warrant out for me, for a hearing, and intended no court hearing, I would feel I had a

cause of action against you, if you made me vulnerable therefor, to the subsequent events of this conspiracy."

p. Paragraph 4 on page 21 should read:

"There was also a psychiatrist present, Dr. Cooper, who did not make any report, sign any papers, or, in any way say anything on the record of this case. We feel this distinguished Dr. Sannella's case from the doctor in the Joyce case; and that, being a co-conspirator, he would not come under the statute, nor the Ferrazzi case. I think that is our position."

THE PLAINTIFF
(s) LUCILLE E. MORAN
LUCILLE E. MORAN, *Pro se*
and Post Office Box 82,
Westfield, Massachusetts

Post Office Box 381,
Key West, Florida

Appendix G

[1] STENOGRAPHIC TRANSCRIPT OF HEARING

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CA 64-751-W

LUCILLE E. MORAN,

v.

HARRY D. PENAN.

WYZANSKI, D.J.

Appearances:

Lucille E. Moran (pro se), Post Office Box 82, Westfield, Massachusetts

Samuel W. Gaffer, Assistant Attorney General, for the Defendant.

U.S. District Court
Federal Building
Boston, Massachusetts
Wednesday, March 17, 1965

[2] Miss Foley: Civil 64-751-W, Lucille E. Moran against Harry D. Penan.

The Court: What is up this time?

Mr. Gaffer: This is the plaintiff's motion to settle by correcting the transcript.

The Court: There is no such motion known to me.

I am not the person who transcribes the record. If it is wrong you ought to straighten it out with the court reporter.

Miss Moran: Your Honor, I have this in my file—

The Court: I am sorry, I can't run the court reporter; the court reporter sometimes runs me.

Miss Moran: I took this right out of the form.

The Court: Write it out on a formal basis—

Miss Moran: I took it out of the rule book.

The Court: What is wrong with it?

Miss Moran: Well, Your Honor, I think I got going a little fast the day before Christmas [3] and Mr. Grace missed a good deal.

The Court: Well, you can file an affidavit to that effect, if it is true.

Miss Moran: I think so, your Honor.

The Court: If you file an affidavit in the Court of Appeals and they think it is worthless, they will dismiss it; if they don't think it is worthless they will not.

My attitude is it is not worth much of my time.

Next case.

(Hearing closed)

Appendix H

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

Civil Actions No. 64-690-W
LUCILLE E. MORAN v. JOHN METZLER
Civil Actions No. 64-697-W
LUCILLE E. MORAN v. FRANCIS J. CROWLEY, RAYMOND McGURK
Civil Action No. 64-863-W
LUCILLE E. MORAN v. WILLIAM F. BENCH, CLEMENT A. RILEY, JAMES R. LAWTON

PLAINTIFF'S MOTION FOR PERMISSION TO JOIN

The Plaintiff, Lucille E. Moran, moves the Court as follows:

1. That Civil Actions numbered 64-690-W; 64-697-W; and 64-863-W be joined in consolidation with the several actions consolidated for the record by the Court on December 24, 1964; because the right to relief claimed by the Plaintiff in the above-specified actions arises out of the same transactions and occurrences, and is part of the same series of transactions and occurrences as these already consolidated for the record. That further, the Plaintiff has relied upon the same laws in all actions she has brought before the Court.

THE PLAINTIFF
(s) LUCILLE E. MORAN
LUCILLE E. MORAN, *Pro se*
and Post Office Box 82,
Westfield, Massachusetts

Post Office Box 381,
Key West, Florida

Appendix I

UNITED STATES CODE, TITLE 37, § 351-354 (p. 6213)

351 Definitions: The term "member of the uniformed services" as used in this chapter means any person on the active or retired list of the Army, Navy, Marine Corps, Air Force, Coast Guard and Geodetic Survey, or Public Health service, including transferred members of the Fleet Reserve and the Fleet Marine Corps Reserve, and members of the Reserve components of the respective services entitled to Federal pay either on the active or any retired list of said service.

352 Payments: Designation of person to receive amounts due; discharge of United States' obligation; competent medical authority.

Any active-duty pay and allowances, or any amounts due for accumulated or accrued leave, or any retired or retainer pay, otherwise payable to any member of the uniformed services, who, in the opinion of competent medical authority, is mentally incapable of managing his own affairs, is authorized to be paid for the use and benefit of such incompetent member, to such person or persons who may be designated by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Health, Education and Welfare, or such other officer or officers as the respective Secretaries may designate for such purposes, without the necessity for appointment in judicial proceedings of a committee, guardian, or other legal representative, and any payments to the person or persons so appointed as provided herein, shall constitute a complete discharge of the obligations of the United States as to the amounts so paid: *Provided,* That no person serving in a legal, medical or fiduciary capacity, or in any other capacity shall demand or accept any fee, commission, or

charge for any service rendered under the authority of, or in connection with, the provisions of this chapter; *Provided further,* That the provisions of this section shall not apply where a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to any payments made hereunder prior to the receipt in the paying agency of the department or agency concerned of notice of such appointment: *And further provided,* That competent medical authority shall consist of a board of not less than three qualified medical officers one of which shall be specially qualified in the treatment of mental disorders, appointed by the secretary of the department concerned from available medical officers.

353 Regulation; Posting of Bonds.

The secretary of the department concerned shall prescribe such regulations as may be necessary to carry out effectively the provisions of this chapter, including a requirement that such person or persons designated to receive payments as provided in section 352 of this title shall furnish satisfactory assurances that amounts received have been and will be applied to the use and benefit of the incompetent and, in cases wherein the payments may be reasonably expected to exceed $1,000, that a suitable bond shall be provided by such person or persons which may be paid for out of sums due the incompetent.

354 Determination by Secretaries as Conclusive

The determination of the person or persons authorized to receive payments as provided in section 352 of this title, made by the respective secretaries or by their duly designated subordinates pursuant to this chapter, shall be final and conclusive and not subject to review by any court of Government official.

Rule 8, General Rules of Pleading.

(a) Claims For Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

Rule 9, Pleading Special Matters

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or Third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensible party . . . . . .

DEPARTMENT OF THE ARMY PAMPHLET 600-5 (Retired Army Personnel Handbook)

Chapter 2, *Military Status of Retired Personnel,* par. 7, p 4

7. COMPOSITION OF RETIRED LISTS

"Upon retirement from the Army, members are placed on one of the following Retired Lists:

United States Army Retired List

Regular Army commissioned officers, warrant officers, and enlisted personnel, retired for any reason, who are granted retired pay under any provision of law.

Army of the United States Retired List

Officers other than Regular Army officers, who are members and former members of the Reserve components (Army Reserve and Army National Guard of the United States) and personnel who served in the Army of the United States without component, who are granted retired pay under any provision of law, and retired warrant officers and enlisted personnel of the Regular Army who by reason of service in temporary commissioned grade are entitled to receive retired pay of the commissioned grade . . ."

Chapter 4, *Receipt of Retired Pay,* par. 25, p. 14

25. METHOD OF PAYMENT

"The monthly pay of a retired member will be made, as the member indicates, by a check drawn to—

his own order and mailed to him at his home; *or*

his own order and mailed to his bank.

If a retired member elects to have his check drawn to his own order and mailed to his bank, he should first determine from the bank officials whether a power of attorney is required in order to deposit checks to his account."

Chapter 4, *Receipt of Retired Pay*, par 25, p. 14

26. REPORT OF EXISTENCE

"Reports of existence must be signed and submitted by the individual retired member or by a trustee or legal representative of an incompetent member. This may not be signed by any other individual or by any person to whom power of attorney has been granted. A power of attorney granted by a retired member does not constitute authority to sign and submit reports of existence."

Chapter 11, *Medical and Hospital Care*, par 67 p. 47

67. RETIRED MEMBERS AND DEFENDANTS ELIGIBLE FOR MEDICAL TREATMENT

"All personnel who are on the retired list (par. 7) and entitled to retired pay are eligible for medical treatment and hospitalization except personnel granted retired pay under title 10, United States Code, section 1331 (Reservists who have completed 20 or more years satisfactory Federal service and reached the age of (60) . . . . ."

Chapter 12, *Veterans Administration Medical and Hospital Care*, par 76, p. 51

. . . . . "There are more than 171 Veterans Administration hospitals, at least one in each state. When in need of hospital care, the retired member should apply in person at the nearest Veterans Administration Regional Office or hospital, or, if unable to go in person, he may make application by mail. Application forms are available at any Veterans Administration office or hospital."

UNITED STATES CONSTITUTION, First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the government for a redress of grievances.

UNITED STATES CONSTITUTION, Fourth Amendment

"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION, Fourteenth Amendment

"Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CODE, Section 1343, Title 28 at page 5024

Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of any citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

UNITED STATES CODE, Section 1983, Title 42, at page 7062 *Civil Action for Deprivation of Rights:*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. s. 1979)

UNITED STATES CODE, SECTION 1984, Title 42, at page 7062

All cases arising under the provisions of this act in the courts of the United shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

UNITED STATES CODE, Section 1985, Title 42, at page 7062
(1) *Preventing Officers from Performing Duties.*

If two or more persons in any State or Territory conspire to prevent by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties

thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) *Obstructing Justice, Intimidating Party, Witness, or Juror*

If two or more persons in and State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) *Depriving Person of Rights or Privileges*

If two or more persons in any State or Territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or

indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or, if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on accont of such support or advocacy; in any case of conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. s. 1980)

Table of Contents.

Statement of the case	1
Argument	3
Conclusion	4

Table of Authorities Cited.

Cases.

Campbell v. Glenwood Hills Hospital, Inc., 224 F. Supp. 27	3
Daly v. Stotts, 126 F. Supp. 555	3
Hoffman v. Halden, 268 F. 2d 280	3
Joyce v. Ferrazzi, 323 F. 2d 931	3
Kenney v. Hatfield, 132 F. Supp. 814, affd. sub nom. Kenney v. Fox, 232 F. 2d 288; cert. den. sub nom. Kenney v. Hatfield, 352 U.S. 856, 77 S. Ct. 84, 16 L. Ed. 2d 66	3
Mezullo v. Maletz, 331 Mass. 233	3
Whittington v. Johnston, 201 F. 2d 810	3

Statutes.

28 U.S.C. § 1343	1
42 U.S.C. §§ 1983, 1985(3)	1, 3
Rules of the Supreme Court of the United States	
Rule 19	4
Rule 23	3

Supreme Court of the United States.

OCTOBER TERM, 1965.

No. 608.

LUCILLE E. MORAN,
Petitioner,

v.

HARRY D. PENAN ET AL.,
Respondents.

BRIEF OF RESPONDENTS JAMES S. BULKLEY AND VALLEY BANK AND TRUST COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Statement of the Case.

The petitioner, invoking the jurisdiction conferred by 28 U.S.C. § 1343, filed complaints against the various respondents in this series of consolidated actions in the District Court, alleging that the respondents deprived her of rights, privileges and immunities secured to her by the Constitution and laws of the United States, in violation of 42 U.S.C. § 1983, and conspired to deprive her of the equal protection of the laws in violation of 42 U.S.C. § 1985(3). The District Court, after hearing, entered judgments granting the respondents' motions to dismiss the actions. The

Court of Appeals affirmed the judgments of the District Court, and the petitioner seeks review of that decision by her petition to this Court.

The essence of the petitioner's complaints, insofar as the respondents James S. Bulkley and Valley Bank and Trust Company are involved, pertains to certain guardianship proceedings concerning the petitioner. On July 13, 1959, petitioner, who was then a retired member of the United States Army (R. 92), executed a power of attorney to Valley Bank and Trust Company for the collection of her monthly army retirement pay (R. 92, 56-58).

On November 16, 1959, respondent Bulkley, acting as attorney for the petitioner's two brothers, who were co-executors of their and the petitioner's father's estate (R. 93), filed a petition in the Probate Court for Hampden County, Massachusetts, praying that respondent Valley Bank and Trust Company be appointed guardian of the estate of the petitioner (R. 58-60), who was at this time a patient at the Veterans Administration Hospital located at Bedford, Massachusetts, under a commitment order issued by the District Court of Springfield, Massachusetts (R. 19), and based upon a certificate of her mental illness pursuant to the General Laws of Massachusetts (R. 17-18).

Valley Bank and Trust Company, after hearing, was appointed guardian of the estate of the petitioner by the Probate Court for Hampden County on December 15, 1959, and thereupon qualified as such guardian (R. 71-72, 174-184). On May 3, 1962, the respondent Bank was allowed by the Probate Court to resign as guardian of the petitioner's estate (R. 185).

Respondent Bulkley is, and has been for many years, an attorney engaged in the private practice of law in the Commonwealth of Massachusetts (R. 91). Respondent Valley Bank and Trust Company is, and was at the time of the actions alleged by the petitioner, a trust company

organized and existing under the laws of the Commonwealth of Massachusetts (R. 91). There is no allegation by the petitioner that at the time of any of the events complained of respondent Bulkley was an official of any state or respondent Valley Bank and Trust Company was an official agency of any state.

Argument.

The Court below did not err in affirming the judgment of the District Court granting respondents' motions to dismiss the petitioner's complaints on the ground that they failed to state a cause of action under the Civil Rights Acts, 42 U.S.C. §§ 1983, 1985(3), upon which relief can be granted.

At no time during the course of events of which the petitioner complains did respondents Bulkley or Valley Bank and Trust Company do any act involving the petitioner under color of state law. All of their actions were done as private citizens, and, in fact, the petitioner so alleges (R. 91). Such a situation is fatal to the petitioner's attempt to state a cause of action against these respondents under the Civil Rights Acts, 42 U.S.C. §§ 1983, 1985(3). *Campbell* v. *Glenwood Hills Hospital, Inc.*, 224 F. Supp. 27 (D.C. Minn. 1963). *Whittington* v. *Johnston*, 201 F. 2d 810 (5th Cir. 1953). *Daly* v. *Stotts*, 126 F. Supp. 555 (D.C. Okla. 1954). *Kenney* v. *Hatfield*, 132 F. Supp. 814 (D.C. Mich. 1955), affd. sub nom. *Kenney* v. *Fox*, 232 F. 2d 288; cert. den. sub nom. *Kenney* v. *Hatfield*, 352 U.S. 856, 77 S. Ct. 84, 16 L. Ed. 2d 66. *Joyce* v. *Ferrazzi*, 323 F. 2d 931 (1st Cir. 1963). See *Mezullo* v. *Maletz*, 331 Mass. 233 (1954). *Hoffman* v. *Halden*, 268 F. 2d 280 (9th Cir. 1959).

The attention of the Court is also respectfully directed to the petitioner's failure to comply with Rule 23 of this Court requiring a petition for writ of certiorari to contain

a concise statement of the case and a direct and concise argument amplifying the reasons relied on for the allowance of the writ pursuant to Rule 19 of this Court. The above-cited cases show that the decisions below in the instant case do not fall within the circumstances set forth in Rule 19 of this Court under which this Court would grant the writ of certiorari sought by the petitioner.

Conclusion.

For the foregoing reasons the respondents believe that the petition for writ of certiorari in the instant case should be denied.

THE RESPONDENTS,
JAMES S. BULKLEY,
By Matthew J. Ryan, Jr.,
Attorney,
VALLEY BANK AND TRUST COMPANY,
By J. Bushnell Richardson, Jr.,
Attorney.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 608

LUCILLE E. MORAN, PETITIONER

v.

HARRY D. PENAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR RESPONDENTS, DUFF, McKEON, GOFSTEIN, AND LUISE IN OPPOSITION

1. On November 7, 1959, petitioner, an Army veteran, was admitted at the request of Dr. Salvatore Sannella to the Veterans' Administration Hospital at Bedford, Massachusetts, pursuant to Ann. Laws of Mass., c. 123, sec. 79.[1] Dr. Sannella believed that petitioner was in need of immediate care and treatment for mental derangement (R. 151). On November 16,

[1] Section 79 provides that the "superintendent or manager of any institution for the insane may, when requested by a physician * * * receive and care for in such institution as a patient, for a period not exceeding ten days, any person deemed by such superintendent or manager to be in need of immediate care and treatment because of mental derangement * * *."

791-285—65

1959, respondent Duff, the hospital's assistant registrar, executed an application for the commitment of petitioner to an institution for the mentally ill (R. 63). The application was then filed in the District Court of Central Middlesex, Concord, Massachusetts. On December 2, 1959, a certificate was executed and filed in that court which stated that petitioner was eligible for care and treatment by the Veterans' Administration and that hospital facilities were available at which she could be cared for and treated (R. 66, 67). Five days later, she was examined by two qualified physicians, who certified that she was mentally ill and recommended that she be committed to an institution (R. 67–69). Their certification was also filed in the District Court of Central Middlesex. A commitment hearing was then held in that court pursuant to Ann. Laws of Mass., c. 123, sec. 51, and thereafter the court ordered petitioner committed to the V.A. Hospital at Bedford, Massachusetts. She remained there until February 12, 1960, when she was released. Respondent Gofstein was an employee of the hospital during the period of her confinement.

While hospitalized at the Bedford institution, guardianship proceedings were instituted by petitioner's brothers in the Hampden County Probate Court (R. 58–60). Respondent McKeon, a physician at the V.A. hospital, signed a statement, which was filed in the probate court, stating that petitioner had been found to be mentally ill and was a patient at the hospital (R. 70, 71). A hearing was held by the probate court at which respondent Luise entered an appearance as counsel for the Veterans' Administra-

tion. On December 15, 1959, the probate court appointed a Springfield bank to be petitioner's guardian. Thereafter, upon the bank's demand, the V.A. hospital forwarded certain personal property of petitioner which was in its custody to the bank (R. 53–84).

On November 16, 1964, petitioner filed an action in federal district court (D. Mass., No. 64–825–W) in which she alleged that respondents Duff, McKeon, Gofstein and others had engaged in a conspiracy to deprive her of her civil rights, under color of law, in violation of 42 U.S.C. 1983 and 1985(3) (R. 20–55). She also alleged that Dr. McKeon had violated 37 U.S.C. (1958 ed.) 351–354. On November 27, 1964, she filed an action in the district court against respondent Luise and others, charging that they, too, had violated these statutes.[2] Upon respondents' motion to dismiss the various actions for failure to state a claim upon which relief could be granted, the district court dismissed petitioner's complaints (R. 159–160). The Court of Appeals for the First Circuit affirmed *per curiam*, stating that "[o]ur examination of the record discloses no error" by the district court (Pet. 18–19).[3]

2. The court of appeals correctly upheld the district court's determination that petitioner's complaints failed to state any claims upon which relief could be granted. 37 U.S.C. (1958 ed.) 351–354 provides that, when any person on the active or retired list of the armed

[2] Numerous other actions were instituted by petitioner against various individuals involved in the commitment and guardianship proceedings.

[3] A petition for rehearing was denied on June 28, 1965 (Pet. 22).

services is deemed by competent medical authority incapable of managing his own affairs, any payments due him can be made to such other person as the Secretary of the Army, Navy or Air Force may designate. Those sections do not provide that a civil damages action may be brought for the violation of any of their provisions.

Such an action may be brought against any person who, under color of any State or territorial law, deprives another of a right secured by the Constitution and laws of the United States (42 U.S.C. 1983), or who conspires with others to deny a person the equal protection of the laws (42 U.S.C. 1985(3)). However, to come within the latter statute a plaintiff must "allege facts amounting to intentional and purposeful discrimination" (*Norton* v. *McShane,* 332 F. 2d 855, 863 (C.A. 5), certiorari denied, 380 U.S. 981; see *Snowden* v. *Hughes,* 321 U.S. 1, 8–9; *Gundling* v. *Chicago,* 177 U.S. 183, 186; *Joyce* v. *Ferrazzi,* 323 F. 2d 931, 932–933 (C.A. 1)). Petitioner has alleged no such facts (R. 20–55, 89–97). As for 42 U.S.C. 1983, it is "plainly limited to acts done under color of some state or territorial law" and does not embrace the acts of federal officials. The respondents in whose behalf this memorandum is filed are federal officials.[4] *Gregoire* v. *Biddle,* 177 F. 2d 579, 581 (C.A. 2), certiorari denied, 339 U.S. 949; see, also, *Wheeldin* v. *Wheeler,* 373 U.S. 647, 650, n. 2.

[4] *Monroe* v. *Pape,* 365 U.S. 167, and *Cooper* v. *Pate,* 378 U.S. 546, on which petitioner relies (Pet. 10), involved State, not, as here, Federal, officials.

Accordingly, there is no warrant for further review by this Court, and the petition for certiorai should (at least as to the respondents in whose behalf this memorandum is filed) be denied.[5]

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

OCTOBER 1965.

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[5] In view of the district court's disposition of petitioner's complaints, it was unnecessary for respondents to establish that, in any event, their acts were performed within the scope of their authority and in the pursuance of their official duties, within the meaning of *Barr* v. *Matteo*, 360 U.S. 564.

U.S. GOVERNMENT PRINTING OFFICE: 1965

Office-Supreme Court, U.S.
FILED
DEC 2 8 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. 608.

LUCILLE E. MORAN,
PETITIONER,

v.

HARRY D. PENAN ET AL.,
RESPONDENTS.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

LUCILLE E. MORAN,
Petitioner, Pro se

Blanchard Press, Inc., Boston, Mass. — Law Printers

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RESPONDENTS.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

The Petitioner, Lucille E. Moran, respectfully moves for leave to file the annexed petition for timely rehearing of the order of this Court denying petition for writ of certiorari in this case, entered on December 6, 1965.

Rehearing is sought primarily, as is pointed out more fully in the annexed petition, because section 1984 of Title 42 of the United States Code entitled, **"Same; Review of Proceedings"** requires this Court to review all cases brought under section 1983 of Title 42.

Timely rehearing is sought for the secondary reason that the decision of the Court of Appeals for the First Circuit is in direct conflict with this Court's decisions in *McNeese* v. *Board of Education for Community Unit School District 187,* Cahokia, Illinois, 373 U.S. 668; and prior cases.

Rehearing is further sought at this time, for the tertiary reason, that the decision of the Court of Appeals for the First Circuit is in direct conflict with the decision of the Court of Appeals for the Fifth Circuit in *Nesmith* v. *Alford,* 318 F 2d 110; and the decision of the Court of Appeals for the Ninth Circuit in *Hoffman* v. *Halden,* 268 F 2d 280.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se

In the Supreme Court of the United States

No. 608.

LUCILLE E. MORAN,
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v.

HARRY D. PENAN ET AL.,
RESPONDENTS.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

Petitioner, Lucille E. Moran, prays that this Court grant rehearing of its order of December 6, 1965, denying the petition for writ of certiorari, No. 608, Oct. Term, 1965, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit in the above entitled case as prayed for in the petition filed September 24, 1965, herein.

Reasons for Granting Rehearing and Issuing the Writ

1. In her petition for writ of certiorari, the petitioner cited 42 U. S. C. 1984 to invoke the jurisdiction of this Court; recited its text in Appendix thereto; but did not urge it as an essential demand of the law, because this Court has established a uniform policy of granting writs of certiorari in cases arising under provisions of 42 U. S. C.

1983, as a matter of its discretion. The petitioner had no reason to believe she would be made the exception.

Title 42, United States Code, section 1984, at page 8021, entitled, **"Same; Review of Proceedings"**; reads as follows:

> "All cases arising under the provisions of this act in the courts of the United States *shall be reviewable* by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court. Mar. 1, 1875, ch. 114, Section 5, 18 Stat. 337
>
> "REFERENCES IN TEXT
>
> This act, referred to in the text, has reference to act Mar. 1, 1875. Sections 1 and 2 of said act Mar. 1, 1875 were not classified to this Code. Sections 3 and 4 of said act Mar. 1, 1875, formerly classified to sections 44 and 45 of Title 8, were repealed by act June 25, 1948, ch. 645, section 21, 62 Stat. 862, and are now covered by sections 243 and 3231 of Title 18, Crimes and Criminal Procedures. *Section 5 of act Mar. 1, 1875 is classified to this section.*"
>
> (Emphasis supplied)

The preamble to this Act of the Forty-third Congress of March 1, 1875, sets forth with exceeding clarity, the spirit and intent of law; conscientious, even-handed justice; and orderly Constitutional government, in the following language:

> "Whereas, it is essential to just government we recognize the equality of all men before the law; and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice

> to all, of whatever persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore . . . . . "

The petitioner now urges rehearing be granted and the writ issued, based on 42 U. S. C. 1984, because Section 5 of the Act of March 1, 1875 has been specifically classified to Section 1983 of Title 42 of the United States Code.

2. The decision of the Court of Appeals for the First Circuit is in direct conflict with this Court's decision in *McNeese* v. *Board of Education for Community Unit School District 187,* Cahokia, Illinois, 373 U.S. 668. Significantly, the Court reviewed the McNeese case and other causes arising under the provisions of section 1983 of Title 42 in the courts of the United States, and unreservedly granted petitions for writs of certiorari. See *Monroe* v. *Pape,* 365 U.S. 167; and *Cooper* v. *Pate,* 378 U.S. 546.

The doctrine of the equality of all men before the law, to enable protection of each in his rights, without favor or prejudgment is not amenable to a policy of hasty discretions. No government can secure and enforce a purpose of "equal and exact justice to all" except through its Courts. To grant use of Courts to some, and to deny usage to others similarly protesting deprivations of rights, privileges and immunities secured by the Constitution and laws, is to place any persons so denied outside the protection of the law by excommunication: An anachronism of silence repugnant to the historical liberties intended by the First Constitutional Amendment. It was fitting that the Forty-third Congress should enact legislation on March 1, 1875, to make the great principles of the Thirteenth and Fourteenth Constitutional Amend-

ments and laws arising therefrom, enforceable, equally and exactly for all by requiring Supreme Court review, as is now classified to Civil actions for deprivation of rights; thereby comprehending the proposition that Rule of Law supersedes rules made for the convenience of men, when the gravamen of a complaint concerns the Constitutional rights, privileges and immunities of the aggrieved.

3. The decision of the Court of Appeals for the First Circuit is in direct conflict with decisions of the Court of Appeals for the Fifth Circuit in *Nesmith* v. *Alford,* 318 F 2d 110; and the Court of Appeals for the Ninth Circuit in *Hoffman* v. *Halden,* 268 F 2d 280.

In the Nesmith case, the Court said, in sustaining the cause, with reference to actions brought jointly under provisions of sections 1983 and 1985 of Title 42:

> "To claim under section 1983 of this title, giving civil action for deprivation of civil rights, conspiracy is not an indispensible element as it is under this section expressly conferring action for conspiracy to interfere with civil rights, but it may be charged as legal mechanism through which to impose liability on each and all of defendants without regard to person doing particular act, and conspiracy is asserted in that situation on more or less traditional principles of agency, partnership, joint venture and the like."

In the Hoffman case, the Court said at page 293, in sustaining the complainant's cause of action, also brought jointly under provisions of sections 1983 and 1985 of Title 42:

> "A cause of action for conspiracy or joint action based on violation of section 1983 of this title providing that every person who, under color of any statute,

ordinance, etc, of any state or territory subjects or causes to be subjected any citizen of the United States or other person within jurisdiction thereof to deprivation of any right, privileges, or immunities secured by Constitution and Laws shall be liable to injured party, is broader than conspiracy to impede justice with intent to deny a citizen equal protection of the law and conspiracy to deprive a person or class of persons of equal protection of the law or equal privileges and immunities under the law."

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the First Circuit.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se

CERTIFICATE

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se